

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 489

Introduced by Assembly Member Huffman

February 24, 2009

An act to amend Sections 8040, 8041, 8047, 8052, 8053, 8055, 8057, 8058, 8059, 8060, 8061, 8062, 8063, 8064, 8065, 8067, 8068, and 15003 of, *to amend the heading of Article 7.5 (commencing with Section 8040) of Chapter 1 of Part 3 of Division 6 of, to add Section 8041.5 to, to repeal Section 8051 of, and to repeal and add Section 8042 of, the Fish and Game Code, relating to commercial fishing.*

LEGISLATIVE COUNSEL'S DIGEST

AB 489, as amended, Huffman. Commercial fishing.

Existing law regulating commercial fishing imposes, or authorizes the imposition of, various license, permit, and registration fees. Existing law requires specified persons to pay commercial fishing fees, *referred to as a "landing tax,"* calculated on the total weight of fish delivered, based on a rate-per-pound schedule applicable to specified aquatic species.

This bill would delete that fee requirement and that rate schedule, and, instead, impose a fee calculated as a set percentage of the average ex-vessel price, as defined, established by the Fish and Game Commission for a species ~~or complex~~ of fish. *The bill would require the fees to be used by the department for the commercial fishing program pursuant to specified provisions of law. The bill would make conforming*

changes to refer to the fee as a “landing fee” instead of a “landing tax.”

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The Department of Fish and Game is responsible for
4 managing and protecting the state fisheries resources. As part of
5 that responsibility the department regulates, manages, and oversees
6 commercial fishing.

7 (b) The Department of Fish and Game receives revenue to fund
8 regulation, management, and oversight of commercial fishing in
9 the form of permit fees, licenses, stamps, landing taxes, and the
10 General Fund.

11 (c) Based on a 2005 report by the Department of Fish and Game,
12 the revenue received from the commercial fishing industry covers
13 only 22 percent of the program costs. The report indicates that the
14 ex-vessel value of commercial fish landed in 2005 was
15 approximately \$109 million and the landing tax revenue to the
16 state equaled only one percent or \$1 million.

17 (d) In order to more equitably distribute the financial burden
18 on the commercial fishing industry and generate additional revenue
19 to fund the regulation, management, and oversight of commercial
20 fishing, it is the intent that a commercial landing-~~tax~~ *fee* in
21 California should be established, based on the ex-vessel value of
22 the fish, as done in Washington and Oregon.

23 SEC. 2. *The heading of Article 7.5 (commencing with Section*
24 *8040) of Chapter 1 of Part 3 of Division 6 of the Fish and Game*
25 *Code is amended to read:*

26
27 Article 7.5. Landing-~~Taxes~~ *Fees*
28

29 ~~SEC. 2.~~

30 SEC. 3. Section 8040 of the Fish and Game Code is amended
31 to read:

32 8040. The following definitions govern the construction of this
33 article.

1 (a) “Commercial fisherman” means a person who has a valid,
2 unrevoked commercial fishing license issued pursuant to Section
3 7850.

4 ~~(b) “Landing tax” means a privilege tax imposed pursuant to~~
5 ~~this article.~~

6 ~~(e)~~

7 (b) “Ex-vessel price” means the price paid for fish at the time
8 the fish are delivered by the commercial fisherman to the fish
9 receiver or processor as described in Section 8041.

10 (c) “Landing fee” means a fee imposed on a fish receiver or
11 processor, as described in Section 8041, based on the ex-vessel
12 price for fish.

13 SEC. 4. Section 8041 of the Fish and Game Code is amended
14 to read:

15 8041. (a) The following persons shall pay the landing-tax fee
16 determined pursuant to Section 8042:

17 (1) Any person who is required to be licensed as a fish receiver,
18 and any person who is licensed before January 1, 1987, as a
19 wholesaler or a processor pursuant to former Section 8040 and
20 who receives fish from commercial fishermen.

21 (2) Any commercial fisherman who sells fish to any person who
22 is not a licensed fish receiver.

23 (b) Notwithstanding subdivision (a), a person licensed pursuant
24 to Section 8460 who only takes, transports, or sells live freshwater
25 fish for bait or a commercial fisherman who sells live freshwater
26 fish for bait to such a licensed person, and a person licensed
27 pursuant to Section 8033.1 who takes, transports, or sells live
28 aquaria fish as described in Section 8597 or a commercial
29 fisherman who sells live aquaria fish, are exempt from the landing
30 tax fee imposed under this article. It is the intent of the Legislature
31 that the license fee for live aquaria fish described in Section 8033.1
32 shall be in lieu of a landing-tax fee imposed under this article.

33 (c) Notwithstanding subdivision (a), a person who purchases,
34 sells, takes, or receives live marine fish for use as live bait as
35 described in subdivision (g) of Section 8030 is exempt from the
36 landing-tax fee imposed under this article.

37 SEC. 5. Section 8041.5 is added to the Fish and Game Code,
38 to read:

1 8041.5. *On or before January 1, 2012, the department shall*
2 *report to the Joint Legislative Budget Committee and to the Joint*
3 *Committee on Fisheries and Aquaculture all of the following:*

4 (a) *A summary of state regulations related to imported fish and*
5 *shellfish products sold in the state that are not subject to the*
6 *commercial landing fee imposed under this article, and an estimate*
7 *of the department's annual costs to enforce those regulations.*

8 (b) *An estimate of the landing fee that would need to be assessed*
9 *on imported fish and shellfish products sold in the state that are*
10 *not subject to the commercial landing fee imposed under this*
11 *article, to cover the department's costs identified in subdivision*
12 *(a).*

13 ~~SEC. 3.~~

14 SEC. 6. Section 8042 of the Fish and Game Code is repealed.

15 ~~SEC. 4.~~

16 SEC. 7. Section 8042 is added to the Fish and Game Code, to
17 read:

18 8042. (a) The amount of the landing ~~tax~~ *fee* under this article
19 shall be a percentage of the average ex-vessel price *per pound* for
20 that species ~~or complex of fish~~. ~~As used in this section, "complex~~
21 ~~of fish" means a group of fish species managed under the same~~
22 ~~federal or state fishery management plan.~~

23 (b) The landing ~~tax~~ *fee* shall be set as follows:

24 (1) Beginning January 1, 2011, the percentage shall be 1 and
25 one-half percent of the average ex-vessel price for any species ~~or~~
26 ~~complex~~ of fish.

27 (2) Beginning January 1, 2013, the percentage shall be 3 percent
28 of the average ex-vessel price for any species ~~or complex~~ of fish.

29 (c) The commission shall establish the average ex-vessel price
30 for each species ~~or complex~~ of fish for the purpose of this section
31 based on the prior year statewide average ex-vessel price.

32 (d) *The revenue from commercial fishing landing fees imposed*
33 *under this article shall be used by the department for the*
34 *commercial fishing program pursuant to this part and Part 1.7*
35 *(commencing with Section 7050).*

36 SEC. 8. Section 8047 of the Fish and Game Code is amended
37 to read:

38 8047. (a) (1) A person licensed under Article 7 (commencing
39 with Section 8030) who takes his or her own fish shall make a
40 legible record in the form of the landing receipt as required by

1 Sections 8043 and 8043.1 at the time the fish are brought ashore.
2 The original signed copy of the landing receipt shall be delivered
3 by the licensee to the department on or before the 16th day or the
4 last day of the month in which the fish were landed, whichever
5 date occurs first after landing. A copy of the landing receipt shall
6 be retained by the licensee for a period of four years and shall be
7 available for inspection at any time within that period by the
8 department. A copy of the landing receipt shall be delivered to an
9 agent authorized in writing by the majority of the persons who
10 participated in the taking of the fish, excluding the commercial
11 fisherman receiving the original copy.

12 (2) A person licensed under Section 8033.5 who sells his or her
13 fish to a licensed receiver may use a transportation receipt to
14 transport those fish only to that licensed receiver. The receiver
15 shall complete a landing receipt for those fish. A person who sells
16 his or her fish to the ultimate consumer shall complete a landing
17 receipt pursuant to Sections 8043 and 8043.2. Transportation
18 receipts shall be completed at the time the fish are transferred from
19 the fishing vessel.

20 (b) Every commercial fisherman who sells fish taken from the
21 waters of this state or brought into this state in fresh condition to
22 persons not licensed to receive fish for commercial purposes
23 pursuant to Article 7 (commencing with Section 8030) shall make
24 a legible record in the form of the landing receipt required by
25 Sections 8043 and 8043.1. Persons subject to Section 8043 shall
26 remit the landing ~~tax~~ *fee* imposed by Section 8041. The person
27 taking, purchasing, or receiving the fish, whether or not licensed
28 under Article 7 (commencing with Section 8030), shall sign the
29 landing receipt. The original signed copy of the landing receipt
30 shall be delivered by the commercial fisherman to the department
31 on or before the first and 16th day of each month. A copy of the
32 landing receipt shall be retained by the commercial fisherman for
33 a period of four years and shall be available for inspection at any
34 time within that period by the department. A copy of the landing
35 receipt shall be retained by the person taking, purchasing, or
36 receiving the fish until they are prepared for consumption or
37 otherwise disposed of. A copy of the landing receipt shall be
38 delivered to an agent authorized in writing by the majority of the
39 persons who participated in the taking of the fish, excluding the
40 commercial fisherman receiving the original copy.

1 (c) (1) Every commercial fisherman or his or her designee, who
2 transports, causes to be transported, or delivers to another person
3 for transportation, any fish, except herring, taken from the waters
4 of this state or brought into this state in fresh condition, shall fill
5 out a transportation receipt according to the instructions and on
6 forms provided by the department at the time the fish are brought
7 ashore.

8 (2) The original signed copy of the transportation receipt shall
9 be delivered by the commercial fisherman to the department on
10 or before the 16th day or the last day of the month in which the
11 fish were landed, whichever date occurs first after landing. A copy
12 of the transportation receipt shall be retained by the commercial
13 fisherman who filled it out for a period of four years and shall be
14 available for inspection at any time within that period by the
15 department. A copy of the transportation receipt shall be given to
16 and retained by the person transporting the fish until the fish are
17 sold fresh, processed, or otherwise disposed of.

18 (3) The transportation receipt is required only for transit
19 purposes.

20 (4) A person transporting fish from the point of first landing
21 under a transportation receipt is not required to be licensed to
22 conduct the activities of a fish receiver as described in Section
23 8033.

24 (5) The transportation book receipt shall be issued to an
25 individual fisherman and is not transferable.

26 (d) The transportation receipt shall contain all of the following
27 information:

28 (1) The name of each species of fish, pursuant to Section 8045.

29 (2) The date and time of the receipt.

30 (3) The accurate weight of the species of fish being transported.
31 Sablefish may be reported in dressed weight, and if so reported,
32 shall have the round weights computed, for purposes of
33 management quotas, by multiplying 1.6 times the reported dressed
34 weight.

35 (4) The name and identification number of the fisherman. The
36 signature of the fisherman authorizing transportation.

37 (5) The name of the person transporting the fish.

38 (6) The name of the fish business, the fish business identification
39 number, and the corresponding landing receipt number issued by
40 the fish business to the commercial fisherman.

(7) The department registration number of the vessel and the name of the vessel.

(8) The department origin block number where the fish were caught.

(9) The port of first landing.

(10) Any other information the department may prescribe.

(e) The numbered transportation receipt forms in each individual transportation receipt book shall be completed sequentially. A voided fish transportation receipt shall have the word "VOID" plainly and noticeably written on the face of the receipt. A voided fish transportation receipt shall be submitted to the department in the same manner as a completed fish transportation receipt is submitted to the department. A commercial fisherman who is no longer conducting business as a licensed fisherman shall forward all unused transportation receipts and transportation receipt books to the department immediately upon terminating his or her business activity.

~~SEC. 5.~~

SEC. 9. Section 8051 of the Fish and Game Code is repealed.

SEC. 10. Section 8052 of the Fish and Game Code is amended to read:

8052. Landing ~~taxes~~ fees shall be used only for the administration of laws relating to the commercial fishing industry pursuant to this part and Part 1.7 (commencing with Section 7050), except as follows:

(a) Not less than 90 percent of the landing ~~tax~~ fee on herring taken for roe shall be expended for research and management activities to maintain and enhance the herring resources within the waters of this state.

(b) Not less than 90 percent of the landing ~~tax~~ fee on thresher shark or bonito (mako) shark shall be expended for the study required by, and for the costs of administering, Article 16 (commencing with Section 8560) of Chapter 2.

SEC. 11. Section 8053 of the Fish and Game Code is amended to read:

8053. ~~Landing taxes~~ (a) Landing fees imposed by this article shall be paid quarterly to the department within 30 days after the close of each quarter.

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(b) If any landing-~~tax~~ fee is not paid within 30 days after the close of the quarter for which it is due, the department shall collect amounts owing under the procedures prescribed for sales and use taxes provided in Chapter 5 (commencing with Section 6451) and Chapter 6 (commencing with Section 6701) of Part 1 of Division 2 of the Revenue and Taxation Code, insofar as they may be applicable, and for those purposes, “board” means the department and “the date on which the tax became due and payable” means that date 30 days after the close of the quarter for which it is due.

SEC. 12. Section 8055 of the Fish and Game Code is amended to read:

8055. All moneys received as a ~~privilege~~-~~tax~~ landing fee from persons who receive salmon from *commercial* fishermen under the provisions of this article shall be used only for the purpose of propagating salmon.

SEC. 13. Section 8057 of the Fish and Game Code is amended to read:

8057. If the department determines that any ~~tax~~ fee or penalty has been paid more than once or has been erroneously or illegally collected or computed, the department shall set forth that fact in the records of the department. The excess amount collected or paid shall be credited on any amounts then due and payable from the person under this part, and the balance shall be refunded to the person, or his successors, administrators, or executors.

SEC. 14. Section 8058 of the Fish and Game Code is amended to read:

8058. In the event of overpayment of any of the ~~taxes~~ fees imposed by this article, the ~~taxpayer~~ *feepayer* may file a claim for refund or a claim for credit with the department. No refund or credit shall be approved by the department unless the claim ~~therefor~~ is filed with the department within six months after the close of the calendar year in which the overpayment was made.

SEC. 15. Section 8059 of the Fish and Game Code is amended to read:

8059. Every claim for refund or credit for overpayment of a landing-~~tax~~ fee shall be in writing and shall state the specific grounds upon which the claim is founded.

SEC. 16. Section 8060 of the Fish and Game Code is amended to read:

1 8060. Failure to file a claim for refund or credit within the time
2 prescribed in this article constitutes a waiver of any demand against
3 the state on account of overpayment of a landing ~~tax or taxes~~ fee.

4 *SEC. 17. Section 8061 of the Fish and Game Code is amended*
5 *to read:*

6 8061. Within 30 days after disallowing any claim for refund
7 or credit for overpayment of a landing ~~tax~~ fee in whole or in part,
8 the department shall serve notice of its action on the claimant,
9 either personally or by mail. If served by mail, service shall be
10 made pursuant to Section 1013 of the Code of Civil Procedure and
11 shall be addressed to the licensee at his address as it appears in the
12 records of the department, but the service shall be deemed complete
13 at the time of the deposit of the notice in the mail without extension
14 of time for any reason.

15 *SEC. 18. Section 8062 of the Fish and Game Code is amended*
16 *to read:*

17 8062. Interest shall be paid upon any overpayment of a landing
18 ~~tax~~ fee at the rate of one-half of 1 percent per month from the date
19 of overpayment. The interest shall be paid to the date the claim
20 for refund or credit is approved by the department.

21 *SEC. 19. Section 8063 of the Fish and Game Code is amended*
22 *to read:*

23 8063. If the department determines that any overpayment of a
24 landing ~~tax~~ fee has been made intentionally or by reason of
25 carelessness, it shall not allow any interest thereon.

26 *SEC. 20. Section 8064 of the Fish and Game Code is amended*
27 *to read:*

28 8064. No injunction or writ of mandate or other legal or
29 equitable process shall issue in any suit, action, or proceeding in
30 any court against this state or against any officer of the state to
31 prevent or enjoin the collection under this article of any landing
32 ~~tax~~ fee.

33 *SEC. 21. Section 8065 of the Fish and Game Code is amended*
34 *to read:*

35 8065. No suit or proceeding shall be maintained in any court
36 for the recovery of any amount of landing ~~tax~~ fee alleged to have
37 been erroneously paid or erroneously or illegally determined or
38 collected unless a claim for refund or credit has been duly filed
39 pursuant to Sections 8058 and 8059.

1 *SEC. 22. Section 8067 of the Fish and Game Code is amended*
2 *to read:*

3 8067. If the department fails to mail notice of action on a claim
4 for refund or credit for overpayment of a landing-tax fee within
5 six months after the claim is filed, the claimant may, prior to the
6 mailing of notice by the department of its action on the claim,
7 consider the claim disallowed and bring an action against the
8 department on the grounds set forth in the claim for the recovery
9 of the whole or any part of the amount claimed as an overpayment.

10 *SEC. 23. Section 8068 of the Fish and Game Code is amended*
11 *to read:*

12 8068. If judgment is rendered for the plaintiff, the amount of
13 the judgment shall first be credited on any landing-tax fee due and
14 payable from the plaintiff to the state under this article. The balance
15 of the judgment shall be refunded to the plaintiff.

16 ~~SEC. 6.~~

17 *SEC. 24. Section 15003 of the Fish and Game Code is amended*
18 *to read:*

19 15003. (a) The department may assess a fee on persons
20 growing aquaculture products on public lands and in public waters
21 based on the price per pound of the products sold. The fees, if
22 imposed, shall be set at amounts necessary to defray the costs of
23 the commission and the department in administering this division.
24 However, the fees if any, shall not exceed the-tax rates as provided
25 in Section 8042.

26 (b) The price per pound ~~for these taxation purposes~~ shall be
27 based on the whole product weight or its equivalent as taken by
28 the lessee.

29 (c) The ~~privilege tax fee~~ imposed by this section shall be paid
30 monthly to the department within 30 days after the close of each
31 month. If not paid within 60 days after the close of the month in
32 which it is due, a 10 percent penalty shall be paid.